Supreme Court, U.S.
FILED

941152 NOV 29 1994

OFFICE OF THE CLERK

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

AJIT SINGH,
Petitioner,

VS.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; and GENERAL ACCIDENT INSURANCE COMPANY,
Respondents.

Petition For A Writ Of Certiorari to the California Court of Appeals for the First Appellate District

PETITION FOR WRIT OF CERTIORARI

AJIT SINGH
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East Palo Alto, CA 94303
Telephone: (415) 322-7126
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Petitioner in Pro Per

59 pp

QUESTIONS PRESENTED

This petition presents the following questions, all relating to the issue of the case being denied in the local Supreme Court.

1. Can it be judged just through a medical practitioner - a person's life. The petitioner questions how a decision is just made by whatever is said by a doctor (Dr. Steven D. Feinberg).

2. The judge's decision on my case was upheld for such a long time even through I was on crutches at that case hearing.

3. The doctor's decision to go back to work after my first surgery whereas he came back and had to do the second one himself.

4. The video tape issue did not reveal that the petitioner was frauding. Even in the tape he was limping - a sign of him being in pain.

LIST OF PARTIES AND RULE 29.1 LIST

The caption of this petition identifies all parties involved in this case.

1. Fafco Incorporated
2. General Accident Insurance Company
3. Workers' Compensation Appeals Board
4. Moriarty & Shetler
5. Dr. S.D. Feinberg
6. Donald L. Galine
7. Thomas D. Franklin, M.D.
8. Ravindra Sharma, M.D.
9. E.M. Katz, M.D.
10. Dr. Grove
11. Suzanne Stone, M.D.
12. Paul Manchester, M.D.
13. A. Godfrey, M.D.
14. Walter Eades, M.D.
15. Gary R. Fujimoto, M.D.
16. Dr. Brown
17. Dr. Kastady
18. Dr. Finisee

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No. _____

In The

Supreme Court Of The United States

October Term, 1994

AJIT SINGH,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; AND GENERAL ACCIDENT INSURANCE COMPANY,

Respondents.

Petition For A Writ Of Certiorari to the California Court of Appeals for the First Appellate District

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The unpublished opinion of the Workers' Compensation Appeals Board, State of

California is reprinted in the appendix ("App.") at 1A-5A.

JURISDICTION

The Workers' Compensation Appeals Board, State of California entered judgment on February 18, 1994. It denied a timely petition on July 20, 1994. This Court has jurisdiction to review the judgment by writ of certiorari under 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

To the Honorable and Presiding Justice and Association Justices of me (In The Supreme Court of the United States).

A. The Parties

Petitioner requests issuance of inquiry in the denial of "Petition for Review" which was filed on September 28, 1994, in the

Supreme Court of the State of California, as being very unjust and incorrect.

1. At all times herein mentioned, Fafco (name of the employer) is organized and existing under the laws of California, authorized to transact and transacting business as a solar heating equipment manufacturer in San Mateo County, California, and General Accident Insurance Company of America was, and is, a corporation duly authorized to transact, and transacting, business as a workers compensation insurer in California, with its principal place of business in San Mateo County, California, and at all times herein mentioned insured the employer against liability arising under the California Workers Compensation Law.

2. On June 4, 1990, Ajit Singh (petitioner) was employed by the employer as a machine operator. On that day, Ajit Singh

sustained the following described injury: See Complimentary Page "A".

The injury resulted in the petitioner (i) not working since then, (ii) cannot walk property, (iii) having to undergo very sharp pains, (iv) going through an operation and getting ready for another one; (v) loss of income; (vi) bills being piled up; (vii) having terrible time with his personal and married life.

3. On February 3, 1993, petitioner filed an application for adjudication of claim with the Appeals Board. Thereafter, on April 14, 1993, a hearing in the matter was held before a Workers' Compensation Judge. The matter was submitted for decision and on February 18, 1994, the workers compensation judge issued his Findings, Award and Order, a copy of which is reprinted as Appendix "A" and made a part hereof.

4. On March 5, 1994, within the time prescribed by law, petitioner filed with the Appeals Board a petition for reconsideration, a copy of which is reprinted here as Appendix "B" and made part hereof.

5. The Appeals Board referred the matter to the workers' compensation judge from whose decision reconsideration was sought. On March 29, 1994, the Workers' Compensation Judge prepared, served, and submitted to the Appeals Board his report and recommendations, a copy of which is reprinted here as Appendix "C" and made a part hereof.

6. On May 5, 1994, the Appeals Board issued its order which was a denial for petition for reconsideration. A copy of the order or granted reconsideration and, after reconsideration, issued its decision denying (disallowing) the petition filed by the workers' compensation appeals judge. A copy

of the decision is reprinted here as Appendix "D" and made a part hereof.

7. The order was Disallowed (Exhibit "A") in that the legal opinion of a medical expert witness is not substantial evidence to justify restitution. (See reprinted copy of document titled "Opinion on Decision" attached here as Appendix "E".)

B. Course of Proceedings and Disposition.

1. The petitioner filed an adjudication of claim with the Workers' Compensation Appeals Board on February 3, 1993.

2. On January 3, 1994, the Workers' Compensation Appeals Board, State of California, hearing before Judge Alvin R. Barrett.

3. Petition for Reconsideration filed on March 5, 1994 with the Workers' Compensation Appeals Board.

4. An answer to the Petition for Reconsideration was received on March 29, 1994 which was denied by the Workers' Compensation Appeals Board, State of California (Order Denying Reconsideration).

5. On June 13, 1994, the petitioner filed a petition for Writ of Review with the Court of Appeal of the State of California which was filed with the California Court on July 20, 1994.

6. The Writ of Review was denied by the Court of Appeal and the petitioner received a copy on July 20, 1994.

7. The petitioner filed a Petition for Review on July 27, 1994 with the Supreme Court of the State of California.

8. The Supreme Court of the State of California denied the Petition for Review on September 28, 1994.

Until this time, the cases have been handled by local authorities and on November

29, 1994 the petitioner filed this matter for hearing before the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

Summary of the Argument

The day since my injury, I have been working on and off until November, 1991, when I was finally laid off. I took time off from work to go and see the doctor regarding the terrible pain I have been experiencing. The pain seemed like fluctuating (i.e., it wasn't there always). The Insurance Company doctor kept on saying that it was nothing until a doctor at San Mateo County General Hospital confirmed that I needed an operation. This confirmation came last year (1993) in April. The reason for the pain was still unknown to the doctors and the terrible pain made me limp a lot. Whenever I was experiencing the pain, I could not even walk properly; and

when there was no pain in my back and one of those times was that when I was videod helping my brother-in-law. The doctors by then were saying that it was all fraud. "But I would like to know why the operation was done when he thought I was doing fraud." After the operation, the doctor said it was okay now but I still had the same pain. After the operation the doctor and the lawyer told me to look for a job and work. I couldn't do that because of the pain so I decided to consult another doctor in Monterey and he did an MRI on me. He proved the injury and brought the report back to the doctor who said that I was alright. He apologized to me and said sorry for he could not find anything. After looking at the MRI report he decided to perform another operation which I am waiting the date as of today. My major concern is that how come the doctors say one thing at one moment and

another thing the next moment. These are the people who we trust and they are supposed to be the life savers. How could the first doctor say that all was fraud when after all operation was done and now there is going to be another one done pretty soon. I don't think all these are done for no reason. There has to be reason behind everything and the reason behind my operation is that it hurts and now its becoming irresistible. My medical expenses as it stands today is approximately $35,000.00 and I am not working. An injured person and that even at work. The hospital is now suing for the medical bills but I am unemployed and have no source of income coming. How am I going to pay the bills?

I am requesting that all my medical bills be paid and request some form of compensation to maintain myself and to pay my medical bills for ongoing medical expenses.

The above-mentioned Appendix were how I got the injury and thereafter. Now these are some of the issues which I am very much confused about (i.e., these don't make any sense). Please see attached Appendix "G". In this Appendix, it says that petitioner did not have any substantial evidence to file a writ of review. The following are some of the reasons for the review:

1. The San Mateo County General Hospital records which were sent with the review.

2. There is one more question which worries me a lot is how can one doctor say something else and the other doctor something different? This refers to the S.M.C.G.H. doctor Feinberg and Physician Ravindra Sharma. Dr. Feinberg never did an MRI on my knee to further find out if there really was something very serious whereas Ravindra Sharma through an MRI test on my knee, did

say that there was some abnormalities. We, as patients, treat doctors (MD's) as our God and Life Savers - But, we do lose some faith in them along the line as shown in my case. Please see Appendix "H" for Ravindra Sharmas' (MD) report of the MRI on my knee.

My next Appendix "I" states the contents of the "Petition for Review" and the necessary documents which went with it. Please see Appendix "I". In this Appendix it says: The findings, award and order was the subject of the Petitioner's back injury so that means that my case is still "Wide Open" (i.e., no decisions, either denial or approval being made).

In this Appendix it also says that all the necessary documents were not filed with the very first petition. When we first started working on this case, it did not seem to me that it may be so puzzled and confused. The petitioner thought that his pain and

endurance will not be tested so badly but after we started getting denial reports from the cases then we went on further and dug up all the evidence and reports we could to fight the case. This was one of the reasons not all the reports were filed with The Workers' Compensation Appeals Board nor were they entered into the record as evidence prior to the issuance of the findings, award and order.

Again, in this Appendix, the major focus is on the agreed medical examiner's written report. Through his adverse report the petitioner had to go through all these. This medical professor was introduced by the attorney, Donald L. Galine, who was my attorney at that time. I ha not known Dr. Feinberg before this so I just thought to have him because my attorney was saying so. But finally I have to say that these professional people were not even helping me

in any way. What I mean to say is that these two might have been favoring my opposition. The reason I am saying this is that soon after viewing the videotape they "dumped" me, without further investigating in that matter. If these two were true professionals then they would have appealed against it. Dr. Grove at S.M.C.G.H. has been seeing me for the last 30 months and he never said that I was doing fraud but instead kept on proving that there is an injury by doing operations but Dr. Feinberg just examined for a few times, and he made such a big conclusion that I was doing fraud. I already have undergone two operations and am still in pain today. If there was not anything wrong, no one would keep suggesting surgeries.

In medical professions, sometimes, there are mistakes made so if there is any justice prevailing some other medical professor should be given a chance to verify about my

knee and back injury. It should not be just left for one person to have made a decision. This is the question of life and death for a person and needs far more better attention than what it is getting now. Furthermore, if there is still any question that I am doing fraud, I am even ready to undergo a "lie detector test" for my pain because I know that I am in pain and am not normal. This is the reason I think that this should be granted to me. I am also willing to go to a neutral medical practitioner for my knee in order to get it justified that there is something wrong with it. The petitioner has just undergone another surgery of his knee and is in painful attitude. He believes and prays that he may finally get some relief from the highest authorities in the country through this Appeal.

///

CONCLUSION

Petitioner's petition for a writ of certiorari should be granted.

A. Singh

AJIT SINGH

Ajit Singh
Petitioner in Pro Per
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East Palo Alto, CA 94303

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Dated: December 21, 1994

APPENDIX

Unpublished

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

AJIT SINGH,

Petitioner,

v.

FAFCO, INC., and GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA,

Defendants.

Case No. SFO 0353170

FINDINGS, AWARD AND ORDER

The above-entitled matter having been heard by and submitted for decision to Alvin R. Barrett, Workers' Compensation Judge, said Judge now makes his decision as follows:

FINDINGS OF FACT

1. Ajit Singh, born November 15, 1964, while employed as a machine operator at

Redwood City, California on June 4, 1990 by Fafco, then insured for workers' compensation liability by General Accident of America, sustained injury arising out of and occurring in the course of his employment to his back.

2. The stipulations in the Minutes of Hearing of April 14, 1993 are true and are incorporated herein by reference.

3. Applicant's earnings at the time of injury were sufficient to produce a temporary disability rate of $185.87.

4. This injury caused temporary disability to and including June 19, 1992, entitled applicant to temporary disability indemnity at the rate of $185.87 per week, less credit to defendants for all sums heretofore paid on account thereof, if any.

5. This injury caused no permanent disability.

6. Employment Development Department did not furnish benefits during temporary disability.

7. Applicant will not require further medical treatment to cure or relieve from the effects of this injury.

8. Applicant is entitled to reimbursement of self-procured medical treatment incurred before June 9, 1992, in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

9. Applicant is entitled to reimbursement of medical-legal costs in an unknown amount incurred before June 9, 1992, to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

10. There is insufficient evidence to justify restitution.

11. A reasonable attorneys' fee is not allowable.

AWARD

AWARD IS MADE in favor of AJIT SINGH, against GENERAL ACCIDENT OF AMERICA, of:

(a) Temporary disability indemnity to and including June 19, 1992 entitling applicant to temporary disability indemnity at the rate of $185.87 per week, less credit to defendants for all sums heretofore paid on account thereof, if any.

(b) Reimbursement of self-procured medical treatment in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

(c) Reimbursement of medical-legal costs in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

ORDER

IT IS ORDERED that the lien of Employment Development be, and it is hereby, DISALLOWED.

/s/

ALVIN R. BARRETT
Workers' Compensation Judge

Filed and Served by mail on:
February 18, 1994
On all parties listed on
Official Address Record.
By: Diofe G. Carbonel

State of California

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF INDUSTRIAL ACCIDENTS

WORKERS' COMPENSATION APPEALS BOARD

AJIT SINGH,

Applicant,

vs.

FAFCO, INC., and GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA,

Defendants.

PETITION FOR RECONSIDERATION

Case No. SF 353170; 360657

[File date stamped 3/7/94]

A decision was filed in the above-entitled case on January 3rd 1994. The applicant is aggrieved by said decision and hereby petitions for reconsideration upon the

following grounds: (strike out items not applicable)

1. By the order, decision, or award, the Board acted without or in excess of its powers.

3. The evidence does not justify the findings of fact.

4. Petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing.

5. The findings of fact do not support the order, decision or award.

In support of the above, petitioner gives the following details, including a statement of facts upon which petitioner relies and a discussion of the law applicable thereto:

1. Applicant prays the board to review and evaluate and consider the medical records from Chope Hospital. It is applicant's

contention that he suffered permanent injuries to his back and right lower extremities as evidenced by the records.

2. Applicant requests that the matter be submitted to the medical bureau for evaluation of the records and the applicant.

3. Request the use of a Fiji/Hindi translator.

WHEREFORE, Petitioner requests that reconsideration be granted; that further proceedings be had; and that decision be made to give petitioner all the benefits to which he is entitled under the Labor Code of the State of California, including the relief requested herein.

/s/

A. SINGH, Petitioner

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AJIT SINGH,

Applicant,

vs.

FAFCO, INC., and GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA,

Defendants,

REPORT AND RECOMMENDATION ON

PETITION FOR RECONSIDERATION

Case Nos. SFO 0360657, SFO 0353170

INTRODUCTION

Applicant, a 25 year old machine operator, seeks reconsideration of portions of Findings and Award dated February 18, 1994, which determined that the 1990 injury to his back resulted in no permanent

disability and no temporary disability beyond June 19, 1992. Petitioner raises the usual statutory grounds and seeks Board's review of the Chope Hospital records, as well as referral to the Medical Bureau, presumably for appointment of an independent physician. For reasons set forth below, it will be recommended that the petition be denied or dismissed without further proceedings.

DISCUSSION

While applicant was represented by counsel the matter was scheduled for "pre-trial conference" and stipulations were taken on April 14, 1993. At that conference counsel stipulated that applicant, a machine operator born November 15, 1964, while employed by FAFCO, insured by General Accident Insurance Company of America, on June 4, 1990, sustained compensable injury to the back. Counsel referred applicant to an agreed medical examiner (AME), Dr. Steven

Feinberg, who evaluated petitioner's condition on several occasions. Eventually, surveillance films were taken depicting applicant's activities on separate days and shown to the AME, who concluded that petitioner was a malingerer.

After hearing testimony and viewing videotape films, I adopted the agreed medical examiner's opinion. Consequently, no additional temporary disability indemnity was awarded and no permanent disability indemnity was awarded. (Power v. Workers' Comp. Appeals Bd. (1986) 179 CA3d.775.)

Because of discrepancies between applicant's reported complaints and activities depicted on the videotape, defendant sought restitution of benefits previously paid. However, the opinion on decision noted that the legal opinion of a medical expert witness was not sufficient evidence to justify restitution.

Accordingly, defendant's petition was denied. I do not know the status of any proceedings involving the Fraud Unit.

Initially, a petition for reconsideration can be summarily denied if it contains no more than allegations of statutory grounds for reconsideration, unsupported by specific references to the record or principles of law. (8 Cal.Code Regs. 10846.) Moreover, even a lengthy petition may be inadequate if it fails to discuss the evidence or legal principles that would require a different result. (See Green v. Workers' Comp. Appeals Bd. (1980) 45 Cal.Comp.Cases 564.)

In this case, the opinion on decision described the basis for the disputed findings, and petitioner does not demonstrate why the Board may not rely on the opinion of Dr. Feinberg. Even if the Board reexamines the Chope Hospital record, it is not

prevented from relying on the persuasive opinion of Dr. Feinberg, the agreed medical examiner.

RECOMMENDATION

It is respectfully recommended that the applicant's skeletal petition for reconsideration be denied or dismissed without further proceedings.

/s/

ALVIN R. BARRETT
Workers' Compensation Judge

Filed and served by mail on:
March 29, 1994
On all parties shown on the
Official Address Record.
/s/
By: Diofe G. Carbonel

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION: 4

SINGH, AJIT

vs.

WCAB,

GENERAL INSURANCE CO.,

A066096

San Francisco County No. SF00360657

BY THE COURT:

The petition for writ of review is denied.

The justices participating in this matter were:

Anderson, P.J. (X)	Poche, J. ( )
Perley, J. (X)	Reardon, J. (X)

Dated: Jul. 20, 1994 /s/ ANDERSON, P.J.

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AJIT SINGH,

Applicant,

vs.

FAFCO, INC., and GENERAL ACCIDENT INSURANCE CO. OF AMERICA,

Defendants.

ORDER DENYING RECONSIDERATION

Case Nos. SFO 0360657, SFO 0353170

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate, we will deny reconsideration.

We are, moreover, extending to the WCJ's finding on credibility the great weight to which it is entitled (see Garza v. Workers' Comp. Appeals Bd. (1970) 3 Cal.3d 312, 35 Cal.Comp. Cases 500).

For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration be, and it hereby is, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

/s/ D. J. Hannigan, Deputy

I CONCUR,
/s/ Richard P. Gannet.

Concurring But Not Signing,
Arlene Heath.

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
May 5, 1994

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS.
vsr /s/

Unpublished

WORKERS' COMPENSATION APPEALS BOARD

AJIT SINGH,

Applicant,

vs.

FAFCO, INC., and GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA,

Defendants.

Case No. SF 353170
SF 360657

MINUTES OF HEARING
and
SUMMARY OF EVIDENCE

Place and Time:	San Francisco, January 3, 1994, 1:30 p.m.
Judge:	ALVIN E. BARRETT
Reporter:	Kathleen A. Walsh
Appearances:	Applicant present, in Propria Persona.
	Defendants represented by Law Offices of Moriarty & Shetler; Kevan D. Shetler appearing.

Also Present: Baldev Junjal, Hindi Interpreter.

Lien Claimant Employment Development Department represented by Grace Henry, Hearing Representative.

HEARING

WITNESSES: Patrick Duggan

Thomas H. O'Connor

Urvina Singh

NOTE: MINUTES and SUMMARY OF EVIDENCE on following pages.

DISPOSITION: Upon filing and service of the Summary of Testimony and Minutes of Hearing, the matter will be submitted.

SERVED BY MAIL ON PERSONS SHOWN ON THE OFFICIAL ADDRESS RECORD on JANUARY 5, 1994 by DIOFE.

EXHIBITS: (RECEIVED IN EVIDENCE)

Applicant's Exhibit No. 1: Medical/legal opinion of Edward Katz, M.D., dated August 8, 1991.

Applicant's Exhibit No. 2: Multi-page document on the letterhead of Stanford University Medical Center, which appears to be clinic notes; clinic notes from San Mateo County General Hospital, attaching correspondence from Stanford University

Medical Center, Pain Management Services, dated November 29, 1993.

Applicant's Exhibit No. 3: Two-page document described as a Lien Disclosure and Agreement to Reimburse and Grant of Lien to County of San Mateo, apparently bearing Applicant's signature, and dated April 19, 1993.

Applicant's Exhibit No. 4: One-page Notice dated February 23, 1993, Notice of Delinquency, detailing charges from the San Mateo General Hospital

Defendants' Exhibit A: Documents attached to Defendants' cover letter of March 23, 1993, and itemized on the cover letter.

Defendants' Exhibit B: Original transcript of deposition of Steven D. Feinberg, M.D., dated June 9, 1992.

Defendants' Exhibit C: Five pages of typewritten clinic notes from San Mateo County General Hospital.

Defendants' Exhibit D: Video film taken by Witness Duggan, released to the custody of Defendant.

JUDGE:

During off-the-record discussion, Mr. Shetler recalculated the amount in controversy and subject to the Petition for Restitution. The amount presently demanded of Applicant in restitution of previously paid indemnity and medical treatment expense reaches a total of $8,237.71.

SUMMARY OF EVIDENCE

Called as a witness on behalf of Defendant, Patrick duggan testified substantially as follows.

He is employed by Price and Price private investigators. In March of 1992, the witness received a surveillance assignment regarding Applicant. He conducted sub rosa investigation directed at identifying Applicant's activities.

The witness identified the Applicant in the hearing room.

The witness conducted surveillance on March 13, 1992. He identified the Applicant at 1:37 p.m., in front of a residence at 1244 Laurel Avenue in East Palo Alto. The witness followed Applicant to the Paradise Pizza and Sandwich Shop. He exposed film after observing Applicant's activity at the pizza parlor. He first identified Applicant after a walk-by observance while looking through the front window of the pizza parlor.

He observed Applicant preparing food and noted that the shade of window tint would prevent him from filming the activity at that time. The witness later observed Applicant after affixing a specific lens to his camera which allowed him to view the activity inside the sandwich shop.

At this point, 17 and a half minutes of video film was shown, depicting activity on March 13, 1992.

Applicant is initially seen entering a lightweight pickup truck without obvious difficulty. He is next seen at approximately

6:15 p.m., while walking from side to side inside of a pizza and sandwich shop. He is moving freely within the shop, although partly obscured by a sign in the window.

The witness is seen standing in the shop and talking with one other apparent worker. He occasionally appears to knead pizza dough with his hands and slides a pan into an oven. He walks from side to side behind the counter and eventually sits down at a table in the front part of the shop.

The Applicant was not clearly visible throughout the course of the film. During a portion of the filming, he was obscured behind a counter. He appears seated at times at a table and gestures with his arms elevated about the shoulder level. Occasionally he appears to be eating at the same table.

He was apparently eating on two separate occasions. He walked to the rear of the shop while drinking from a paper or plastic cup and resumed eating afterward.

The Applicant is seen apparently making a pizza. He carries small containers to the counter after bending at the waist to retrieve the containers from a space below the counter level. He sometimes uses a spatula to move items in the oven. He is sometimes animated in his gestures and while walking around the shop.

He was not experiencing obvious limitations of movement, although he was primarily visible from above the waist while standing behind the counter.

At the conclusion of the video taping, the film was marked as Defendants' Exhibit D, and released to the custody of Defendants' counsel.

Witness Duggan resumed testimony.

He observed the Applicant for 4 and one-half hours on March 13, 1992.

Called as a witness on behalf of Defendant, Thomas O'Connor, testified that in March or April of 1992, the witness was employed by Price and Price Investigators. He performed a sub rosa surveillance of Applicant's activities.

He identified the Applicant in the courtroom.

The witness exposed videotape film on April 3, 1992, and April 30, 1992. On April 3, 1992, the witness began filming Applicant's activities at Dr. Feinberg's office near San Mateo County Hospital. On that day, he observed 21 minutes of activity on Applicant's part. He obtained two minutes and 20 seconds of film.

On April 30th, 1992, the witness observed Applicant at 9:18 a.m., and continued to observe his activity until 4:00 o'clock p.m. He began observing Applicant at Dr. Zapollo's office in Palo Alto. He also observed Applicant after following him to Yorkshire Uniforms and Equipment in Redwood City. He observed Applicant for approximately 15 minutes in front of Dr. Zapollo's office.

He compared the behavior in the area in front of Dr. Zapollo's office with the Applicant's behavior at the uniform shop, and described

some difference in Applicant's mobility at the uniform shop.

At this point, the witness placed the videotape in the VCR and the following film is seen: Applicant is seen slowly exiting a car at a gate before entering a parking lot. He entered the car and drove toward the parking lot. He left the car slowly and walked in a deliberate manner with some hesitation across a parking lot and toward a medical building.

He is later seen returning to the same car with the same deliberate gait. He slowly entered the car and closed the door.

The next video film was apparently taken on April 30, 1992. The witness is seen entering a medical building and then travels some distance to a uniform store. He is seen walking slowly and deliberately across the street in front of the medical building. He approaches the building and disappears inside. He is later seen using the same slow, deliberate gait, leaving the building and returning to his car. He first stops to speak to others on the sidewalk.

The Applicant is next seen outside of a store. He is depicted talking to others on the sidewalk in front of the store. He moves back and forth in front of the store but is partly obscured behind a parked car. Consequently, the viewer could not closely examine the Applicant's gait.

Called as a witness on behalf of Applicant, Urvine Singh testified substantially as follows. She is married to the Applicant. They live at 3550 Rolison Road, Number 10, Redwood City.

She is familiar with Applicant's daily routine activities because she sees him every day. The actions depicted on the film are consistent with Applicant's behavior in the home. She can observe the Applicant and ascertain that he is in pain.

The witness is the person who has to take care of APplicant when he is in pain. She may have to take care of the Applicant throughout the night. On occasions she is unable to attend work on the following day. She sometimes rubs the Applicant's back and leg. She also occasionally drives him to the doctor's office.

She administers Naprosyn to Applicant. He sometimes takes Naprosyn two or three times per day.

When the witness goes to work, the Applicant may cook for himself.

CROSS-EXAMINATION

The witness sometimes attends medical appointments with her husband. She had been present on occasion when he saw Dr. Fujimoto. She believes the Applicant was laid off by FAFCO, on November 1, 1991. She was not aware that he had previously been released to return to work on full duty.

The witness attended an appointment with Dr. Feinberg with her husband. She was present on January 30, 1992, when the Applicant saw Dr. Feinberg.

When questioned about her husband's limping, she responded that the Applicant is continuing to limp. She did not know whether he had been moaning and groaning at the time of the appointment.

She cannot recall the dates of all of Applicant's appointments. She told the doctor that Applicant spends "most of the day in bed".

The witness has seen videotape film of Applicant's activities while helping in a pizza shop. The Applicant was helping his sister.

The witness was not present when the Applicant was examined at the Mid-way Medical Group for purposes of Employment Development Department eligibility. She did not know that the doctor had released her husband to return to work after the evaluation at Mid-way Medical Group.

ORDER OF PROOF: If called, the prospective witness would testify that she is the Applicant's sister, and would testify that she had contacted the Applicant to come in and assist her when he was able to do so.

/s/
ALVIN R. BARRETT
WORKERS' COMPENSATION JUDGE

[Excerpt from Defendants' **ANSWER TO PETITION FOR REVIEW OF DECISION OF THE COURT OF APPEAL, 1ST APPELLATE DISTRICT, DIVISION 4**, pages 4-5.]

On June 14, 1994, petitioner timely filed a Petition for Writ of Review in the Court of Appeal, First Appellate District. On July 20, 1994, the Court of Appeal denied the Petition without opinion.

I. WHERE THE PETITIONER DOES NOT ALLEGE A PRIMA FACIE CASE OF ENTITLEMENT TO REVIEW AND THE PETITION DOES NOT ADDRESS WHY THE CAUSE IS APPROPRIATE FOR REVIEW UNDER CAL. RULES OF COURT 29, THE PETITION FOR REVIEW SHOULD BE DENIED.

It is well established that it is the burden of the petitioner seeking relief by extraordinary writ to allege a prima facie case of entitlement, by pleading facts supporting the relief and incorporating documentation filed in the trial court to the extent necessary to understand the proceedings and justify relief. Krueger v.

Superior Court (1979) 89 Cal.App.3d 934, 938 [152 Cal.Rptr. 870].

Furthermore, under Labor Code §5954, the provisions of the Code of Civil Procedure relating to writs of review apply to workers' compensation proceedings. The petition must conform to the rules of the appellate courts dealing with briefs because the petition for writ of review is considered a brief. Swezey, C. California Workers' Compensation Practice (3d ed. 1985) § 11.20; See California Rules of Court 13-18, 40(k).

Cal. Rules of Court 28(e)(3) requires that the petition for review address why the cause is appropriate for review under Rule 29. Cal. Rules of Court 29(a) delineates the three grounds on which a Supreme Court hearing may be granted: (1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law; (2) where the Court of APpeal was without

jurisdiction of the cause; or (3) where, because of disqualification or other reason, the decision of the Court of Appeal lacks the concurrence of the required majority of qualified judges.

Petitioner alleges no such grounds for review in his Petition. The second two grounds for review are inapplicable in this case. As to the first ground, to secure uniformity of decision or the settlement of important questions of law, the questions of law involved in this case are governed by well established principles of workers' compensation law. One such principle is that decisions of the Workers' Compensation Appeals Board should be upheld where the decision is supported by substantial evidence. LeVesque v. Workers' Compensation Appeals Board (1970) 1 Cal.3d 627, 637 [83 Cal.Rptr. 208]; Labor Code §§5952(d), 5953. The other legal principle involved is that

judicial review is confined to the record before the Workers' Compensation Appeals Board at the time of the issuance of the order, decision or award. Union Lumber Co. v. Industrial Accident Comm'n (Thornquist) (1936) 12 Cal.APp.2d 588, 594 [55 P.2d 911].

MRI REPORT by

RAVINDRA SHARMAS, MD

Exam: MRI KNEE - RIGHT,

HISTORY: 29-year-old male with long history of right knee pain. Had meniscectomy for a longitudinal flap tear in the posterior one-third of the medical meniscus. In the same procedure he had meniscectomy for a flap tear of the junction of the anterior two-thirds and posterior one-third of the lateral meniscus. This procedure was performed at an outside hospital on 7/22/93.

PROCEDURE: Sagittal T1 weighted and T2 weighted and coronal spin density and T2 weighted images. No comparison study is available at this time.

FINDINGS: A small joint effusion is visible. A small lateral femoral condyle osteophyte is shown and there is lateral tibial plateau

lipping. The margins of the suprapatellar bursa appear thick and there is also suggestion of synovial thickening and redundancy at the lateral aspect of the knee joint. These appearances raise the possibility of synovitis. An obliquely oriented band of increased signal is shown in the posterior horn of the medial meniscus. This signal abnormality contacts the inferior articular surface as well as the capsular surface of the posterior horn. The anterior horn and midbody of the medial meniscus appear normal. Extensive signal abnormality is shown in the lateral meniscus. There is loss of signal centrally in both the anterior and posterior horns. Coronal images show a Grade III signal abnormality in the midbody which contacts the inferior articular surface. Coronal images also demonstrate abnormal positioning and contour of the anterior horn of the lateral meniscus. This

may represent a free meniscal fragment displaced posteriorly into the lateral joint space. The fragment measures about 1.8 cm. The cruciate and medial collateral ligaments appear intact. Mild degenerative change (mostly subchrondral sclerosis) is shown in the medial joint compartment. The patellar articular cartilage is unremarkable. There is no popliteal fossa cyst.

[Excerpt from Defendants' **ANSWER TO PETITION FOR WRIT OF REVIEW**, filed July 5, 1994, pages 7-8.]

III. SINCE JUDICIAL REVIEW IS CONFINED TO THE RECORDS WORKERS' COMPENSATION APPEALS BOARD, THE MEDICAL RECORDS INCLUDED AS PART OF PETITIONER'S PETITION SHOULD NOT BE CONSIDERED.

Under Labor Code § 5951, when a writ of review is granted, no new or additional evidence shall be introduced in the reviewing court, and the cause shall be heard on the existing record of the Workers' Compensation Appeals Board at the time of issuance of the order, decision or award. Union Lumber Co. v. Industrial Accident Comm'n (Thornquist) (1936) 12 Cal.App.2d 588, 594 [55 P.2d 911].

San Mateo County Hospital, apparently from the Orthopedic Clinic and pertaining to the treatment of his right knee; Progress

Reports and forms dated May 24, 1991, July 11, 1991, November 30, 1990 and November 26, 1990 from the Palo Alto Medical Clinic; excerpts from the August 23, 1991 report of Louise A. Rutledge, M.D., a defense medical-legal examiner; E.D. Patient Care Record, dated June 7, 1991 from Sequoia Hospital District; excerpt from the August 8, 1991 report of Edward M. Katz, M.D, and two medical releases signed by the Petitioner. Also attached is AJIT SINGH's Application for Disabled Person and a copy of a Disabled Person temporary parking placard.

These medical records were not previously filed at the Workers' Compensation Appeals Board, nor were they entered into the record as evidence prior to the issuance of the Findings, Award and Order in question. in fact, Respondent did not have a copy of most of these reports until filed with the

Petition for Writ of Review by the Court of Appeal.

Most of the records provided by Petitioner pertain to the treatment of his right knee. Petitioner's claim form for workers' compensation benefits, dated June 5, 1990, describes his injury as follows: "Employee bumped his lower back on a piece of thermoformer itself while cleaning the machine." The June 21, 1991 Application for Adjudication of Claim alleges injury to the back as well. Most important, the Findings, Award and Order that is the subject of the Petition pertains to Petitioner's back injury. Medical treatment for an injury to Petitioner's right knee has not been awarded.